



KAPLAN KIRSCH ROCKWELL

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January 3, 2011

E-FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: *BNSF Railway Company - Abandonment Exemption - In King County, Washington, Finance Docket No. AB-6 (Sub-No. 463X)*
BNSF Railway Company - Abandonment Exemption - In King County, Washington, Finance Docket No. AB-6 (Sub-No. 465X)
GNP Rly Inc. - Acquisition and Operation Exemption - Redmond Spur and Woodinville Subdivision - Verified Petition for Exemption Pursuant to 49 U.S.C. § 10502, Finance Docket No. 35407

Dear Ms. Brown:

Enclosed please find for filing the Reply of King County, Washington, to the Motion for Protective Order of GNP Rly Inc.

Please do not hesitate to contact me if you have any questions.

Sincerely,

W. Eric Pilsk

Enclosures

cc: All Parties of Record

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. AB-6 (Sub-No. 463X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Redmond Spur, MP 0.00 to MP 7.30)**

STB Docket No. AB-6 (Sub-No. 465X)

**BNSF RAILWAY COMPANY – ABANDONMENT EXEMPTION – IN KING COUNTY,
WASHINGTON
(Woodinville Subdivision, MP 11.25 to MP 23.80)**

STB Finance Docket No. 35407

**GNP RLY INC. – ACQUISITION AND OPERATION EXEMPTION – REDMOND SPUR
AND WOODINVILLE SUBDIVISION – VERIFIED PETITION FOR EXEMPTION
PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF KING COUNTY, WASHINGTON
TO MOTION OF GNP RLY, INC., FOR PROTECTIVE ORDER**

Communications with respect to this pleading should be addressed to:

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Counsel for King County, Washington

Dated: January 3, 2011

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PURSUANT TO 49 U.S.C. § 10502**

**REPLY OF KING COUNTY, WASHINGTON
TO MOTION OF GNP RLY, INC., FOR PROTECTIVE ORDER**

King County, Washington, a political subdivision of the State of Washington (the “County”), hereby responds to the December 15, 2010, Motion of GNP Rly, Inc. (“GNP”) for a Protective Order (the “GNP Motion”) in the above-captioned proceedings.


GNP’s Motion, and the proposed Protective Order, are substantively identical to the Motion for Protective Order and proposed protective order GNP filed in these proceedings on October 27, 2010. In response, King County here restates, and incorporates by reference, its response to GNP’s proposed form of Protective Order, as set forth in King County’s Reply to Motion of GNP Rly., Inc., for Protective Order, filed in these proceedings on November 9, 2010.

In short, King County does not oppose the entry of a protective order in these proceedings, but believes that the order proposed by GNP is overbroad and that the Board should adopt a less restrictive Protective Order in this case that reflects the fact that the parties in this case are not commercial competitors of GNP. Furthermore, King County concurs with and adopts (a) the arguments made by the City of Redmond in its November 12, 2010, Reply to GNP's previous October 27, 2010, Motion for Protective Order, and (b) the form of Protective Order attached to Redmond's Reply.

The form of Order proposed by GNP is overbroad because there are no valid commercial reasons to keep the personnel of the County and its counsel from having full access to any information that may be relevant to this matter. The County is a public entity within the State of Washington, and has no competitive or commercial interest in GNP's business records. Accordingly, the County respectfully requests that the draft Order attached to this Motion as Appendix A, which was previously submitted into this record by the City of Redmond as Appendix A to its November 12, 2010, Reply, should be entered in lieu of the draft order submitted by GNP. The approach reflected in King County's proposed Protective Order is consistent with Protective Orders adopted by this Board in cases involving public entities that have no competitive, commercial interest in the transaction at issue. *See, e.g., The City of Alexandria, Va.—Petition for Declaratory Order*, STB Finance Docket No. 35157 (Service Date Dec. 29, 2008).

For the reasons stated above, the County respectfully requests that the Board issue a Protective Order in the form that is attached to this Motion as Appendix A.

Respectfully submitted,



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Allison I. Fultz

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(202) 955-5600

Attorneys for King County, Washington

Date: January 3, 2011

APPENDIX A

PROTECTIVE ORDER

1. For purposes of this Protective Order:
 - (a) “Confidential Documents” means documents and other tangible materials containing or reflecting Confidential Information.
 - (b) “Confidential Information” means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers), the identification of shippers and receivers in conjunction with shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, and other confidential or proprietary business or personal information.
 - (c) “Designated Material” means any documents designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such materials.
 - (d) “GNP” means GNP Rly, Inc.
 - (e) “Highly Confidential” means information or documents containing shipper-specific rate or cost data, trackage rights compensation levels, or other competitively sensitive or proprietary information.
 - (f) “King County” means King County, Washington.
 - (g) “Public Entity Party” means any of King County or any other party to this proceeding that is a state, local, or regional governmental entity or authority.

- (h) **“Proceedings” means those before the Surface Transportation Board (“the Board”) concerning any directly related proceedings covered by STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), and any related proceedings before the Board, and any judicial review proceedings arising from the same or from any related proceedings before the Board.**
- (i) **“STB” means the U.S. Surface Transportation Board.**

2. **If any Public Entity Party, as a party to these Proceedings, determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then that party may designate and stamp such Confidential Information and Documents as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Any information or documents so designated or stamped as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” shall be handled as provided for hereinafter.**

3. **If GNP as a party to these Proceedings, or any person acting on behalf and at the direction of GNP, determines that any part of a document he or she submits, discovery request he or she propounds, discovery response he or she produces, transcript of a deposition or hearing in which he or she participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents or Highly Confidential Documents, then such party may designate and stamp such Confidential Information and Documents as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”. Each**

such party shall include with his or her information or documents a public certification to the Board describing the confidential nature of the information or documents so designated. Unless any Public Entity Party or the Board objects to such certification, any information or documents so designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be handled as provided for hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Order.

5. In the event that a party determines that additional individuals need access to "Highly Confidential" documents, the party must notify the opposing party: (1) identifying the individual or individuals to whom the party would like to disclose "HIGHLY CONFIDENTIAL" documents, and (2) identifying the "HIGHLY CONFIDENTIAL" documents to be disclosed, after which the opposing party has 24 hours either to consent or to object to the additional disclosure. If the opposing party objects to the additional disclosure, the "HIGHLY CONFIDENTIAL" documents will not be disclosed until the objection is resolved either by agreement of the parties or by the STB.

6. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the STB to adjudicate such challenges.

7. Designated Material received in discovery must be kept either in the office of outside counsel or in the office of the Counsel of any Public Entity Party, may not be copied, and may not be used for any purposes, including without limitation any business, commercial, or competitive purposes, other than the preparation and presentation of evidence and argument in the Proceedings, and/or any judicial review proceedings in connection with the Proceedings and/or with any related proceedings. Notwithstanding the foregoing, any Designated Material that was in the possession of any party or publicly available to any party prior to the commencement of this proceeding may be retained and used for the purposes for which it was received by or available to that Public Entity Party.

8. Any party who receives Designated Material in discovery shall return or destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the STB and retained by counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings, or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands. Notwithstanding the foregoing, any Designated Material that was in the possession of any party prior to the commencement of this proceeding or publicly available to any party may be retained and used for the purposes for which it was received by or available to that party and such Designated Materials need not be returned or destroyed.

9. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the STB unless the pleading or other document is submitted under seal pursuant to the rules of this Board.

10. No party may present or otherwise use any Designated Material at a hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits

and other documents containing or reflecting such Designated Material to the STB to whom relevant authority has been lawfully delegated by the STB, and has accompanied such submission with a written request that the STB: (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

11. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in this Protective Order.

12. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with paragraphs 1 - 5 above, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of any relevant provision of the ICC Termination Act of 1995.

13. All parties must comply with all of the provisions of this Protective Order unless the STB determines that good cause has been shown warranting suspension of any of the provisions herein.

14. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

15. Information that is publicly available or obtained outside of these Proceedings from a person with a right to disclose it shall not be subject to this Protective Order even if the same information is produced and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in these Proceedings.

16. Any party filing with the Board a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" pleading in these Proceedings shall simultaneously file a public version of the pleading.

EXHIBIT A

CONFIDENTIALITY UNDERTAKING

I, _____, have read the Protective Order served on _____, 2010, governing the production and use of Confidential Information and Confidential Documents in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any documents or information marked as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X), before the Surface Transportation Board ("Board"), and/or any judicial review proceedings in connection with STB Finance Docket No. 35407, Docket No. AB-6 (Sub-No. 463X) and Docket No. AB-6 (Sub-No. 465X). I further agree not to disclose any Confidential Information, Confidential Documents, Highly Confidential Information, Highly Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this Proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that a party which asserts the confidential interest shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach. I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking, but shall be in addition to all remedies available at law or equity.

Signed: _____

Position: _____

Affiliation: _____

Date: _____